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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICKY DALE HENSON,

Defendant.

NO: CR-06-2029-LRS

**GOVERNMENT'S RESPONSE TO
 DEFENDANT'S MOTION TO
 COMPEL GRAND JURY
 TRANSCRIPTS**

The Plaintiff, United States of America, by and through JAMES A. McDEVITT, United States Attorney for the Eastern District of Washington, and JAMES P. HAGARTY, Assistant United States Attorney for the Eastern District of Washington, responds to Defendant's Motion to Compel Grand Jury Transcripts as follows:

The Defendant seeks an order compelling the pretrial preparation and production of transcripts of the testimony of witnesses offered by the Government before the Grand Jury.

The applicable statutes and rules are 18 U.S.C. Section 3500 and F.R.C.P. 6 and 26.2. No statement of any government witness or prospective witness shall be subject to subpoena, inspection

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1 or discovery until such witness has testified on direct
2 examination in the trial of the case. 18 U.S.C. Section 3500(a).
3 As defined, "statement" includes a statement made by the witness
4 to a grand jury. 18 U.S.C. Section 3500(e)(3).

5 After a witness has testified on direct examination, the
6 court, on motion of a party, shall order the production of any
7 statement of a witness in the government's possession which
8 relates to the subject matter concerning which the witness has
9 testified. F.R.C.P. 26.2(a). The definition of "statement" in
10 this rule mirrors that of 18 U.S.C. 3500(e)(3) as noted above.
11 See: F.R.C.P. 26.2(f)(1).

12 F.R.C.P. 6(e) addresses disclosure of Grand Jury
13 information, and specifically, disclosure upon the request of a
14 criminal defendant. Such disclosure shall be made upon "a
15 showing that grounds may exist for a motion to dismiss the
16 indictment because of matters occurring before the grand jury."
17 F.R.C.P. 6(e)(3)(C)(ii). The defendant has made no showing
18 sufficient to meet the requirements of the rule.

19 The Government would suggest that neither rule or
20 constitutional provision relied upon the defendant provides
21 authority for the Court to order the requested discovery, which
22 is clearly contrary to the applicable provisions of the statutes
23 and rules. The provisions of F.R.C.P. 16 limit discovery of
24 certain materials, and specifically excludes statements of
25 government witnesses (except as provided for in 18 U.S.C. Section
26 3500) and the recorded proceedings of the Grand Jury. Amendment

1 VI of the United States Constitution establishes the defendant's
2 right to a speedy, public trial, to be informed of the nature and
3 cause of the accusation, have the assistance of counsel and to
4 confront the witnesses against him. It does not, however,
5 address the issue of discovery. It clearly provides no support
6 for the defendant's motion.

7 The Government has no objection to the motion, to the extent
8 it asks for production in accordance with the applicable statutes
9 and rules. However, the Government does object to any request
10 for production in advance of trial or suppression hearing.

11 Therefore, the Government respectfully requests that
12 defendant's motion for pretrial production of witness statements
13 be denied.

14 Respectfully submitted this 17th day of April, 2006.

15 JAMES A. McDEVITT
16 United States Attorney

17 s/ James P. Hagarty
18 JAMES P. HAGARTY
19 Assistant U.S. Attorney
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1 I hereby certify that on April 17, 2006, I electronically
2 filed the foregoing with the Clerk of the Court using the CM/ECF
3 System which will send notification of such filing to the
4 following: Rebecca L. Pennell, 306 East Chestnut Avenue, Yakima,
5 Washington, 98901.

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